

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Northern District of New York

UNITED STATES OF AMERICA

v.

SHANE SMITH

Case No. 1:21-MJ-017-CFH

Defendant

U.S. DISTRICT COURT – N.D. OF N.Y.

FILED

Jan 11 - 2021

AT 2 O'CLOCK 33 MINUTES

John M. Domurad, Clerk

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of December 15, 2020 in the county of Washington in the Northern District of New York the defendant violated:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. 922(g)(1) & 924(a)(2)	Felon in Possession of Ammunition
26 U.S.C. 5841, 5861(d), and 5871	Unlawful Possession of Short Barrel Rifles

This criminal complaint is based on these facts:
Click here to enter text.

☒ Continued on the attached sheet.



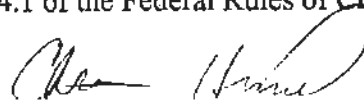
Complainant's signature

FBI Special Agent Rebecca Gworek

Printed name and title

Attested to by the affiant in accordance with Rule 4.1 of the Federal Rules of Criminal Procedure.

Date: January 11, 2021



Judge's signature

City and State: Albany, New York

Hon. Christian F. Hummel, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Rebecca Gworek, being duly sworn, do hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I am a Special Agent with the Federal Bureau of Investigation (FBI), and have been so employed since June 2016. I am assigned to the Albany Division, Albany, NY, and previously worked in the Buffalo Division as a Staff Operations Specialist (SOS). I have investigated a variety of violent crimes, including in the areas of child exploitation, violent gangs and drugs as well as terrorism violations. I am currently investigating federal violations concerning domestic terrorism. I have gained experience regarding such crimes through my previous experience as an analyst working these violations and everyday work related to conducting these types of investigations since becoming an Agent. I am an “investigative or law enforcement officer” within the meaning of Title 18, United States Code, Section 2510(7), that is, an officer of the United States who is empowered by law to conduct investigations and to make arrests for offenses enumerated in Title 18, United States Code, Section 2516.

2. During my tenure with the FBI, I have participated in numerous narcotics and firearms investigations during the course of which I have conducted physical and electronic surveillance, executed search warrants, and reviewed and analyzed recorded conversations and records of firearms and drug traffickers. Through my training, education, and experience (including debriefing cooperating firearms and drug traffickers, monitoring wiretapped conversations of firearms and drug traffickers, and conducting surveillance on numerous occasions of individuals engaged in firearms and drug trafficking), I have become familiar with the manner in which illegal drugs are imported and distributed, the method of payment for such

firearms and drugs, and the efforts of persons involved in such activities to avoid detection by law enforcement.

3. This affidavit is founded on my personal knowledge based on my participation in this investigation, including the review of reports by myself and/or other law enforcement agents, communication with others who have personal knowledge of the events and circumstances described herein, and information gained through my training and experience. The information outlined below is provided for the limited purpose of establishing probable cause and does not contain all details or all facts known to me regarding this investigation.

4. I submit this affidavit in support of a criminal complaint charging SHANE SMITH with (i) violating Title 18, United States Code, Section 922(g)(1) (Felon in Possession of Ammunition); and (ii) violating Title 26, United States Code, Section 5861(d) & 5845(a)(3) (Possession of Two Short Barrel Rifles that Have Not Been Registered in the National Firearms Registration and Transfer Record (NFRTR)). 18 U.S.C. § 922(g)(1) provides, in pertinent part, that “[i]t shall be unlawful for any person who has been convicted in any court, of a crime punishable by a term of imprisonment exceeding one year to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” 26 U.S.C. § 5845(a)(3) defines “firearm” as “a rifle having a barrel or barrels of less than 16 inches in length.” 26 U.S.C. § 5861(d) makes it unlawful for any person “to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record.”

PROBABLE CAUSE

Shane Smith's Prior Felony Conviction and Period of Supervised Release

5. SMITH has suffered a prior felony conviction for a crime punishable by over one year imprisonment. Specifically, on or about September 6, 2016, SMITH was convicted in Federal District Court for the Northern District of New York of the felony offense of Illegal Possession of a Machinegun, in violation of 18 U.S.C. §§ 922(o) & 924(a)(2). SMITH was sentenced to 37 months of imprisonment and three years of supervised release. Standard Condition of Supervision #14 prohibited Smith, while on supervision of “possess[ing] a firearm, destructive device, or any other dangerous weapon.”

6. SMITH's term of supervised release began on or about January 17, 2019. On or about February 14, 2019, SMITH signed a “Defendant's Acknowledgment of Applicable Conditions of Supervision” acknowledging that his conditions of supervision had been read to him, and that he understood those conditions. Also on February 14, 2019, SMITH signed a “Firearms and Dangerous Weapons Warning” which advised him that it was “unlawful for any person who has been convicted of a crime punishable by imprisonment for a term exceeding one (1) year to possess any firearm or ammunition.” SMITH acknowledged this warning on February 14, 2019.

7. On February 4, 2020, the Honorable Mae A. D'Agostino, U.S. District Judge, modified SMITH's conditions of supervision by adding a “maintenance search condition”.

Investigation

8. On December 15, 2020, Probation Officers from the Northern District of New York Probation Office, with support from the FBI, executed a premises search at SMITH's Whitehall, New York residence. Recovered from the residence or its outbuildings were:

- a. An AR-15 style rifle, primarily black in color, with no serial number, and a barrel 14 9/16 inches long;
- b. An AR-15 style rifle, primarily tan in color, with no serial number, a “Punisher” skull, and a barrel 10 5/8 inches long; and
- c. Numerous containers that cumulatively contained hundreds of rounds of ammunition. The ammunition was a mix of ammunition that could be used in either handguns or long guns. The ammunition included rounds made by Lake City Army Ammunition Plant located in Independence, Missouri, and Crossfire Ammunition located in Akron, Ohio.

9. Also on December 15, 2020, SMITH was interviewed by your affiant and NDNY Probation Officer Mike Salamy. During the interview, SMITH was asked a variety of questions, to include questions about the firearms and ammunition that had been recovered. With respect to the firearms that had been recovered, SMITH stated that he built the firearms with a “jig” in his garage. With respect to the ammunition that had been recovered, SMITH stated that he obtained “90%” of his ammunition from “Outdoor Limited” [an online ammunition retailer located in High Point, North Carolina]. SMITH also stated two other places / avenues in which he obtained ammunition.

Interstate Nexus Examination of the Ammunition

10. I have spoken with ATF Special Agent Jason Stocklas, a court-recognized interstate nexus expert, who has examined the recovered ammunition. Agent Stocklas has opined that most, if not all, of the recovered ammunition was manufactured outside the State of New York.

Examination of the Short Barreled Rifles

11. Agent Stocklas has also examined the two AR-15 style rifles referenced in paragraphs 8(a) & (b). Agent Stocklas has determined that the aforementioned rifles have barrels less than 16 inches in length, and as such, in order to be lawfully possessed, need to be registered in the National Firearms Registration and Transfer Record.¹

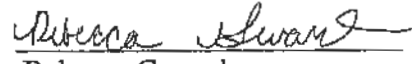
CONCLUSION

12. Based on the foregoing, your affiant submits that there is probable cause to conclude that on or about December 15, 2020, in Washington County, in the Northern District of New York, defendant SHANE SMITH:

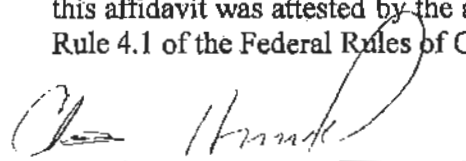
- a. knowing he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed multiple rounds of ammunition, to wit, assorted rounds of Lake City 5.56 x 45 caliber ammunition and assorted rounds of Crossfire 9mm caliber ammunition, and the ammunition was in and affecting commerce, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2); and
- b. knowingly possessed two firearms, to wit, an AR-15 style rifle with no serial number and a barrel 14 9/16 inches long, and an AR-15 style rifle with no serial number and a barrel 10 5/8 inches long, neither of which were registered to him in the National Firearms Registration and Transfer Record, in violation of Title 26, United States Code, Sections 5841, 5861(d), and 5871.

¹ Upon information and belief, Shane SMITH has not registered the firearms referenced in paragraphs 8(a) & (b) in the National Firearms Registration and Transfer Record.

Attested to by the affiant,


Rebecca Gworek
FBI Special Agent

I, the Honorable Christian F. Hummel, United States Magistrate Judge, hereby acknowledge that this affidavit was attested by the affiant by telephone on January 11, 2021, in accordance with Rule 4.1 of the Federal Rules of Criminal Procedure:


Hon. Christian F. Hummel
United States Magistrate Judge